

MAY 20 2008

Application No.: 10/824,860

Docket No.: 10884-00013-US

**Remarks**

The Office Action dated December 20, 2007, has been carefully considered, and this Amendment is responsive thereto. Claims 34-37 are pending in the application, and claims 1-33 and 38-44 are withdrawn from consideration (see further comments below).

Claim 1 is amended herein by incorporating claims 13 and 17 therein, as well as reciting that the gel film of claim 1 requires sodium cation. Claims 13 and 17 are cancelled herein as a result. Support for amending claim 1 to recite the presence of sodium cation can be found in the present specification, for example, at page 13, fifth line from the bottom. Claim 2 is amended to recite the sodium cation of claim 1 being present in an amount less than 50% by dry weight of the kappa-2 carrageenan in the gel film. Support for this amendment can be found in the present application at page 13, lines 1-2 from the bottom. Claims 45 and 46 are added herein. Support for new claims 45 and 46 can be found in the present application, for example, at page 14, lines 3-5. No new matter is added by these amendments and new claims, and entry thereof is respectfully requested.

**Restriction Requirement**

A written restriction requirement and election of species was issued in the present case dated October 15, 2007. Applicants filed a response on November 15, 2007, electing Group I, claims 1-20, 24-25 and 31-44, without traverse. Furthermore, in both a written and oral (telephonic election made by Liza Hohenschutz) response to the election of species requirement, Applicants elected Species B (fillable form), kappa-2 carrageenan present in an amount of at least 0.5% by weight of the gel film, having a solids content of at least 50% by weight of the gel film, the encapsulated material comprises a nutritional/vitamin ingredient, presence of plasticizer and absence of flavorant.

In the outstanding Office Action, the Examiner indicated that claims 1-33 and 38-44 are withdrawn. These withdrawn claims include the claims of Applicants' elected Group I (i.e., claims 1-20, 24-25 and 31-44). As a result, Applicant's representative, Paul A Fair, conducted a telephonic interview with Examiner Helm on May 19, 2008. Examiner Helm acknowledged the

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withdrawal of the elected claims, and suggested that Applicants proceed to file a response to the outstanding Office Action.

Applicants hereby request that the withdrawn elected claims of Group I (except for those cancelled herein) be reinstated and examined in the present application.

**35 USC § 103**

At pages 3-5 of the Office Action, the Examiner rejected claims 34-37 under 35 USC § 103 as being unpatentable over Gilleland in view of de Vries.

Gilleland discloses soft capsules made from a soft gel that contains a modified starch, hydrocolloid gum and plasticizer, and preferably discloses 0.1-15% gum (col. 1, lines 60-63). Gilleland further discloses that the gum is preferably selected from the group consisting of carrageenan, locust bean gum, xanthan gum, gellan gum, agar, alginates, guar gum, gum arabic and pectin (col. 2, lines 12-14), and further adds that the combination of kappa and iota, most preferably, in a weight ratio of 1:1, is especially preferred (col. 2, lines 15-17). Gilleland teaches that the "presence of gum increases the rate of film formation and enhances film strength" (emphasis added) (col. 2, lines 63-65).

The Examiner acknowledges that Gilleland does not teach the use of kappa-2 carrageenan. However, the Examiner indicates that de Vries teaches that kappa-2 carrageenan has properties that are intermediate to both kappa and iota carrageenan (citing Table 1 in de Vries), and concludes that one skilled in the art would have found it obvious to combine the starch based capsule teachings of Gilleland with the teachings of de Vries to arrive at the presently claimed invention.

Applicants respectfully traverse this rejection on the basis that the references, alone or in combination, do not disclose or suggest the presently claimed invention. More specifically, claims 34-37 contain the gel films of claim 1. As amended herein, the gel film of claim 1 comprises kappa-2 carrageenan and sodium cation, and has a solids content of at least 50% by weight and a break force of at least 1,500 grams. Gilleland does not disclose or suggest kappa-2 carrageenan or any particular cations to be used to gel kappa-2 carrageenan, and de Vries, Table 1, state that the metal "required for gelling" for kappa-2 carrageenan is both calcium and

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potassium. There is no disclosure or suggestion of a kappa-2 gel film containing sodium that, in a solids system of at least 50 wt%, would have a break force strength of at least 1,500 grams or any disclosure or suggestion that soft capsules could contain such kappa-2 carrageenan gel films. Applicants respectfully submit that the presently claimed invention (claims 34-37, as well as claims 1-20, 24-25, 31-44 and new claims 45-46) is unobvious and patentable over the combination of Gilleland and de Vries. Accordingly, withdrawal of the rejection is respectfully requested.

**Obviousness-Type Double Patenting Rejection (Provisional)**

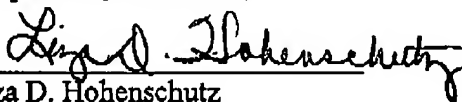
At pages 6-9 of the Office Action, the Examiner issued numerous provisional obviousness type double patenting rejections. Applicants request that these rejections be held until such time as a notice of patentable subject matter has been received in the applications. An appropriate terminal disclaimer may be filed at that time if necessary.

Applicants respectfully submit that the presently claimed invention is in condition for allowance. Early, favorable action is earnestly solicited.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 03-2775, under Order No. 10884-00013-US. A duplicate copy of this paper is enclosed.

Dated: May 20, 2008

Respectfully submitted,

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